

**2003 DRAFTING REQUEST****Bill**Received: **03/12/2003**Received By: **rryan**Wanted: **As time permits**

Identical to LRB:

For: **DuWayne Johnsrud (608) 266-3534**By/Representing: **Julie Pendleton**This file may be shown to any legislator: **NO**Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous**Extra Copies: **MGD**Submit via email: **YES**Requester's email: **Rep.Johnsrud@legis.state.wi.us**

Carbon copy (CC:) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Confidentiality of autopsy reports

**Instructions:**

Redraft 2001 AB 604

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	rryan 05/02/2003	jdye 05/05/2003	rschluet 05/05/2003	_____	amentkow 05/05/2003		
/2	rryan 06/23/2003	jdye 06/23/2003	rschluet 06/24/2003	_____	lemery 06/24/2003	sbasford 07/02/2003 sbasford	

Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

07/02/2003

FE Sent For:

<END>

→ Not  
Needed

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/1	rryan 05/02/2003	jdyer 05/05/2003	rschluet 05/05/2003	_____	amentkow 05/05/2003	per Julie in Johnsrud's office	
/2	rryan 06/23/2003	jdyer 06/23/2003	rschluet 06/24/2003	_____	lemery 06/24/2003		

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/1	rryan 05/02/2003	jdye 05/05/2003	rschlue 05/05/2003		amentkow 05/05/2003		

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**<END>**

03/12/2003 09:19:27 AM

Page 1

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1/?	rryan	1 5/5 jld					
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5-5-3

<END>

**BILL**  
**REQUEST FORM**

**LEGISLATIVE REFERENCE BUREAU**  
**Legal Section Telephone: 266-3561**  
**5th Floor, 100 N. Hamilton Street**

Use of this form is optional. It is often better to talk directly with the LRB attorney who will draft the bill.

Use this form only for **BILL** drafts. Attach more pages if necessary.

Legislator, agency or other body requesting this draft: Rep. Johnsrud

Date: 3/11/03 Person submitting request (name, phone number): Julie Pendleton 6-3534

Persons to contact for questions about this draft (names, phone numbers): Julie Pendleton 6-3534

**Describe the problem, including any helpful examples.**

**How do you want to solve the problem?**

Re-draft of 2001 AB-604

relating to confidentiality of autopsy reports

Please attach a copy of any correspondence or other material that may help us.

If you know of any statute sections that might be affected, list them or provide a marked-up (not re-typed) copy.

You may attach a marked-up (not retyped) copy of any LRB draft, or provide its number (e.g., 1997 LRB-2345/1 or 1995 AB-67): Re-draft of 2001 AB-604

**Requests are confidential unless stated otherwise.**

- May we tell others that we are working on this for you? ☐ Yes ☒ No
- If yes: Anyone who asks? ☐ Yes ☐ No Any legislator? ☐ Yes ☐ No Only the following persons: \_\_\_\_\_

Do you consider this request urgent? ☒ Yes ☐ No If yes, please indicate why: \_\_\_\_\_

Should we give this request priority over any other pending request of this legislator, agency or body? ☐ Yes ☐ No If yes, sign your name here: \_\_\_\_\_

Yes No

In 5/2/03

2278/1

jld

**2001 ASSEMBLY BILL 604**

D-Note

October 29, 2001 - Introduced by Representatives JOHNSRUD, PETTIS, SUDER, LOEFFELHOLZ, HUEBSCH, LADWIG, OTT, ALBERS, MUSSER, BIES, GUNDERSON, FREESE, SYKORA, STONE, WILLIAMS, VRAKAS, PETROWSKI, UNDERHEIM, KREIBICH and SHILLING, cosponsored by Senator DARLING. Referred to Committee on Personal Privacy.

Regen

- 1 AN ACT *to create* 979.028 of the statutes; **relating to:** confidentiality of autopsy  
2 reports.

***Analysis by the Legislative Reference Bureau***

Under current law, the public generally has a right to inspect or copy public records unless otherwise provided by law or unless the custodian of the record demonstrates that the public interest in withholding access to a record outweighs the strong public interest in providing access. Public records include any writing, drawing, or printed, spoken, visual, or electromagnetic information that is recorded or preserved, and that is maintained by a government entity or government official. Autopsy reports, including pictures taken during autopsies, are public records, if maintained by a government official or entity, including a coroner, medical examiner, or district attorney. Autopsy records are therefore open to public inspection unless a current law exception applies to the records (for example, district attorney records are generally confidential) or unless the custodian determines that the public interest in withholding an autopsy report outweighs the public interest in providing access.

This bill creates an exception to the public right to inspect or copy public records specifically for autopsy reports. The bill also prohibits the custodian of an autopsy record or any person involved in conducting an autopsy from releasing to the public any information learned during an autopsy concerning the deceased or the cause of

INS 1



**ASSEMBLY BILL 604**

*that is needed*  
his or her death without permission from the deceased's *spouse or* next of kin, except information ~~necessary~~ to complete the medical certification on a certificate of death.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1        **SECTION 1.** 979.028 of the statutes is created to read:

2        **979.028 Confidentiality of autopsy records.** Autopsy records, including  
3        photographs or other pictorial images of a deceased person that are taken during an  
4        autopsy, are confidential and are not subject to the right of inspection or copying  
5        under s. 19.35 (1). Except as required to complete a medical certification of death  
6        under s. 69.18 (2), the custodian of an autopsy record or a person involved in  
7        conducting an autopsy may not release to the public any information learned as a  
8        result of an autopsy concerning the deceased or the cause of his or her death without  
9        permission from the deceased's next of kin.

10        (END)

*spouse or if there is no spouse keep the deceased's*

2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2278/1ins  
RLR:.....

1

Ins 1:

¶ Currently, any requester has a right to inspect or copy any public record unless otherwise provided under statutory or common law or unless, under a "balancing test," the custodian of the record demonstrates that the public interest in withholding access to the record outweighs the strong public interest in providing that access. Access to autopsy records is generally subject to the balancing test. <sup>plain</sup> Though <sup>plain</sup> autopsy records that are in the custody of a district attorney are generally exempt from public inspection or copying under a common law exception to public access for district attorney files.

This bill exempts autopsy records, including pictorial images taken during an autopsy, from the public right of access to public records. <sup>no</sup> ¶

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2278/1dn

RLR: <sup>1</sup>.....

jld

Julie Pendleton:

\* Under 2001 AB 604, release of information learned as a result of an autopsy is subject to approval by the deceased's next of kin. Under this bill, release of such information is subject to approval by the deceased's spouse, or if there is no spouse, the deceased's next of kin. I made this change because the applicable definition of "kin" does not include a spouse. \*

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2278/1dn  
RLR:jld:rs

May 5, 2003

Julie Pendleton:

Under 2001 AB-604, release of information learned as a result of an autopsy is subject to approval by the deceased's next of kin. Under this bill, release of such information is subject to approval by the deceased's spouse or, if there is no spouse, the deceased's next of kin. I made this change because the applicable definition of "kin" does not include a spouse.

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.state.wi.us

03-2278/1

Phone Call from Julie

Use Fenske amendment from last session instead.



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-2278/1

RLR:jld:ts

2

2003 BILL

RMR

Regen

- 1 AN ACT *to create* 979.028 of the statutes; *relating to:* confidentiality of autopsy  
2 ~~reports~~ records

*Analysis by the Legislative Reference Bureau*

Currently, any requester has a right to inspect or copy any public record unless otherwise provided under statutory or common law or unless, under a "balancing test," the custodian of the record demonstrates that the public interest in withholding access to the record outweighs the strong public interest in providing that access. Access to autopsy records is generally subject to the balancing test. Though, autopsy records that are in the custody of a district attorney are generally exempt from public inspection or copying under a common law exception to public access for district attorney files.

This bill exempts autopsy records, including pictorial images taken during an autopsy, from the public right of access to public records. The bill also prohibits the custodian of an autopsy record or any person involved in conducting an autopsy from releasing to the public any information learned during an autopsy concerning the deceased or the cause of his or her death without permission from the deceased's spouse or next of kin, except information that is needed to complete the medical certification on a certificate of death.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

## BILL

## SECTION 1

INS  
2-1

1 SECTION 1. 979.028 of the statutes is created to read:

2 **979.028 Confidentiality of autopsy records.** Autopsy records, including  
3 photographs or other pictorial images of a deceased person that are taken during an  
4 autopsy, are confidential and are not subject to the right of inspection or copying  
5 under s. 19.35 (1). Except as required to complete a medical certification of death  
6 under s. 69.18 (2), the custodian of an autopsy record or a person involved in  
7 conducting an autopsy may not release to the public any information learned as a  
8 result of an autopsy concerning the deceased or the cause of his or her death without  
9 permission from the deceased's spouse or, if there is no spouse, the deceased's next  
10 of kin.

11 (END)

**2003-2004 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2278/2ins  
RLR:.....

**Analysis Insert:**

This bill provides that autopsy pictures are not subject to public inspection or \* copying, but that, unless an applicable common law exception applies, autopsy records other than pictures are subject to public inspection and copying. The bill further provides that a custodian of autopsy pictures may not release the pictures to the public unless the deceased's spouse or next of kin consents to the release or the court orders release. unless

the



**ASSEMBLY AMENDMENT 2,  
TO 2001 ASSEMBLY BILL 621**

December 21, 2001 - Offered by Representative FRISKE.

At the locations indicated, amend the bill as follows:

1. Page 27, line 15: delete lines 15 to 22 and substitute:

**979.028 Confidentiality of autopsy records.** Photographs or other pictorial images taken during an autopsy are subject to inspection as provided under s. 19.35 (1).<sup>✓</sup> Such pictorial images are not subject to copying under s. 19.35 (1). The custodian of such pictorial images shall prohibit copying of the pictorial images and may not release copies of the pictorial images to the public unless the deceased's spouse, or if there is no living spouse the deceased's next of kin, consents to the release or unless a court of record orders the release. Autopsy records other than photographs and other pictorial images taken during an autopsy are subject to both inspection and copying under s. 19.35 (1).<sup>✓</sup>

(end ins 2-1)

INS 2-1

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## 2003 ASSEMBLY BILL 448

July 25, 2003 - Introduced by Representatives JOHNSRUD, FREESE, OWENS, ZIEGELBAUER, GUNDERSON, MUSSER, PETROWSKI, ALBERS, AINSWORTH, KESTELL, J. WOOD, LOEFFELHOLZ, BIES, LADWIG, HAHN, KRAWCZYK, SERATTI, OTT, PLOUFF and GARD, cosponsored by Senators KANAVAS, SCHULTZ and ROESSLER. Referred to Committee on Government Operations and Spending Limitations.

1 AN ACT *to create* 979.028 of the statutes; **relating to:** confidentiality of autopsy  
2 records.

---

### *Analysis by the Legislative Reference Bureau*

Currently, any requester has a right to inspect or copy any public record unless otherwise provided under statutory or common law or unless, under a "balancing test," the custodian of the record demonstrates that the public interest in withholding access to the record outweighs the strong public interest in providing that access. Access to autopsy records is generally subject to the balancing test. Though, autopsy records that are in the custody of a district attorney are generally exempt from public inspection or copying under a common law exception to public access for district attorney files.

INS → This bill provides that autopsy pictures are not subject to public inspection or copying, but that, unless an applicable common law exception applies, autopsy records other than pictures are subject to public inspection and copying. The bill further provides that a custodian of autopsy pictures may not release the pictures to the public unless the deceased's spouse or next of kin consents to the release or unless the court orders the release.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

3 SECTION 1. 979.028 of the statutes is created to read:

# ASSEMBLY BILL 448

**979.028 Confidentiality of autopsy records.** Photographs or other pictorial images taken during an autopsy are subject to inspection as provided under s. 19.35 (1). Such pictorial images are not subject to copying under s. 19.35 (1). The custodian of such pictorial images shall prohibit copying of the pictorial images and may not release copies of the pictorial images to the public unless the deceased's spouse, or if there is no living spouse the deceased's next of kin, consents to the release or unless a court of record orders the release. Autopsy records other than photographs and other pictorial images taken during an autopsy are subject to both inspection and copying under s. 19.35 (1).

**(END)**

**2003-2004 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB 2278/2cor  
RLR:.....

INS

This bill provides that the public right to inspect or copy any portion of an autopsy record, other than a photo taken during the autopsy, is subject to the balancing test, as under current law. Under the bill, the public right to inspect an autopsy photo is also subject to the balancing test, as under current law. However, the bill prohibits the custodian of an autopsy photo from allowing a member of the public to copy an autopsy photo unless the deceased's spouse or next of kin consents to the copying or unless a court orders the custodian to allow copying.